

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

KEVIN K. MOORE

Claimant

V.

JACKSON FARMERS, INC.

Respondent

AND

FARMLAND MUTUAL

Insurance Carrier

Docket No. 1,071,835

ORDER

STATEMENT OF THE CASE

Claimant requested review of the January 8, 2015, preliminary hearing Order entered by Administrative Law Judge (ALJ) Rebecca Sanders. Bryce D. Benedict of Topeka, Kansas, appeared for claimant. David J. Bogdan of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

The ALJ found claimant failed to sustain his burden of proving personal injury by accident arising out of and in the course of his employment with respondent on February 5, 2014. The ALJ noted the only medical evidence presented shows claimant aggravated a preexisting condition in his left knee.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the January 7, 2015, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Claimant argues the fall he suffered on February 5, 2014, was the prevailing factor in causing his injury (traumatic chondromalacia) and need for medical treatment. Claimant contends the medical evidence is consistent with finding he had asymptomatic preexisting degenerative joint disease and “a resolving *traumatic* chondromalacia” at the time of the

accident.¹ Claimant notes the accident did not aggravate preexisting symptoms because he was previously asymptomatic.

Respondent maintains the ALJ's Order should be affirmed in all respects.

The sole issue for the Board's review is: did claimant suffer a personal injury by accident arising out of and in the course of his employment with respondent?

FINDINGS OF FACT

Claimant is the manager of respondent's shop, store, and warehouse. Claimant testified on February 5, 2014, while working alone, he fell and injured his left knee while hauling a 25-pound bag of feed. Claimant explained:

. . . I was working on tires and I had to go to the warehouse to load some feed. Being by myself, I'm very hurried doing the job. So I stepped on a short pallet of feed to grab a bag, a 25-pound bag of feed up on a rack and I put it on my shoulder, and I went to step back off of it and the plastic on the pallet kinda pulled my feet out from under me and all my weight went down on my left knee, pretty much flattened my knee on the concrete.²

Claimant experienced immediate pain after the fall and informed human resources of the incident. Respondent sent claimant to Holton Family Health Clinic the following day, where he was scheduled for an MRI. Claimant indicated he underwent the MRI approximately one week after his visit to the clinic.

Respondent then sent claimant to Dr. Michael T. McCoy of Cotton-O'Neil Orthopedics for treatment. Claimant's chief complaint was left knee pain aggravated by weight-bearing and movement. Dr. McCoy performed a physical examination and reviewed claimant's MRI. In his progress note dated February 27, 2014, Dr. McCoy wrote:

[Claimant] has an MRI that shows a probable old, chronic posterior cruciate tear. He's got normal menisci, but some early chondromalacia of the medial femoral condyle and patellofemoral joint.³

Dr. McCoy recommended claimant not overdo stairs or ladders and try to lessen his overall body weight. He also recommended claimant take Celebrex, but claimant testified he did not take the medication because he could not afford it. Dr. McCoy provided a series

¹ Claimant's Brief (filed Jan. 27, 2015) at 2.

² P.H. Trans. at 6.

³ *Id.*, Resp. Ex. A at 4.

of cortisone injections to claimant's left knee and noted claimant did fairly well with the treatment.

Claimant discussed the MRI findings with Dr. McCoy, but told the doctor he had no recollection of a prior injury to his left knee. Claimant testified he had no prior issues, injuries, or treatment to his left knee prior to the incident. He said, "If I did [previously sustain an injury to the left knee], I didn't know I did it, you know."⁴ Claimant further noted, "... I never had any pain in my knee, either knee. I've never had any pain in either one."⁵

Dr. McCoy noted claimant had early osteoarthritis in the left knee.⁶ Dr. McCoy continued treating claimant conservatively, recommending claimant avoid putting pressure on the knee when possible. Claimant testified he treated with Dr. McCoy until the end of November 2014, when the doctor told him to schedule another appointment should he have any flare-ups or issues with the left knee. Claimant stated he scheduled an appointment with Dr. McCoy shortly before the preliminary hearing because he had developed problems over the prior two weeks.

In a letter dated November 14, 2014, Dr. McCoy answered the questions set forth by respondent's October 9, 2014, letter. In response to whether the work activity of February 5, 2014, or preexisting conditions were the prevailing factor for the symptoms and diagnosis of claimant's left knee, Dr. McCoy wrote:

No. The arthritis and posterior cruciate tear antedated the injury. The fall aggravated the symptoms.⁷

Regarding whether the February 2014 incident or preexisting conditions were the prevailing factor for the need for current treatment, Dr. McCoy answered:

[Claimant] had more pain after the fall on 2/5/14. He aggravated his [preexisting] condition. We aspirated his knee and found no blood.⁸

Claimant indicated he uses a cane while not at work to keep pressure from his left knee. He stated he never used a cane before the incident of February 2014. Claimant described his current condition:

⁴ P.H. Trans. at 8.

⁵ *Id.* at 14.

⁶ See *Id.*, Resp. Ex. A at 9.

⁷ *Id.* at 1.

⁸ *Id.*

Q. How are you doing – or how's your knee doing today, Mr. Moore?

A. It's – it's pretty much the same as it was after the injury. I went to my family doctor and he prescribed me some prescription ibuprofen. That kinda keeps the inflammation down. A couple of weeks ago – two weeks ago I had a couple of terrible weeks. My knee was swelled twice the size as it should be and it popped four or five times every step I took. But the ibuprofen that he give me has kind of settled that down, but if I miss one, I sure know it.⁹

Claimant continues to work for respondent, but he noted his hours were lessened due to respondent's "projected loss over the next year."¹⁰

PRINCIPLES OF LAW

K.S.A. 2013 Supp. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2013 Supp. 44-508(f) states, in part:

(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹¹ Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted

⁹ P.H. Trans. at 11.

¹⁰ *Id.* at 18.

¹¹ K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

by K.S.A. 2013 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.¹²

ANALYSIS

The only medical opinion in the record is from Dr. McCoy. Dr. McCoy's opinion that claimant aggravated a preexisting condition is uncontroverted. There is no evidence of any lesion or change in the physical structure of claimant's body. Uncontroverted evidence may not be disregarded and is generally regarded as conclusive absent a showing it is improbable or untrustworthy.¹³ The medical evidence shows claimant solely aggravated a preexisting condition and rendered a preexisting condition symptomatic.

CONCLUSION

Claimant failed to meet the burden of proving he suffered an injury arising out of and in the course of his employment with respondent.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Rebecca Sanders dated January 8, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2015.

HONORABLE SETH G. VALERIUS
BOARD MEMBER

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Rebecca Sanders, Administrative Law Judge

¹² K.S.A. 2013 Supp. 44-555c(j).

¹³ See *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).